



06 FEB 2007

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In re Application of
YAMAMICHI et al.
Application No.: 10/581,442
PCT No.: PCT/JP04/18169
Int. Filing Date: 06 December 2004
Priority Date: 10 December 2003
Attorney Docket No.: 2006_0779A
For: THEFT PREVENTION SYSTEM

DECISION ON PETITION

This decision is issued in response to the declaration submitted on 04 January 2007 which is being treated as a Request under 37 CFR 1.42.

BACKGROUND

On 06 December 2004, applicants filed international application PCT/JP04/18169, which claimed a priority date of 10 December 2003. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 23 June 2005. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee in the United States was to expire 30 months from the priority date, 10 June 2006.

On 02 June 2006, applicants filed a transmittal for entry into the national stage in the United States, which accompanied by, inter alia: the requisite basic national fee as required by 35 U.S.C. 371(c)(1); an English translation of the international application; an executed declaration; and a preliminary amendment.

On 04 January 2007, applicants filed "Submission of Substitute Declaration and Power of Attorney.

DISCUSSION

37 CFR 1.42 *When the Inventor is Dead*, states, in part:

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.

Section 409.01(a) of the Manual of Patent Examining Procedure (MPEP) states that the application can also be executed by "all of the heirs" of the deceased inventor, where no legal representative has been appointed.

A. Declaration Filed 02 June 2006

The declaration filed on 02 June 2006 is executed by Msami Yamamichi, Satomi Yamamichi, and Keiko Yamamichi as the "heirs" of the deceased inventor, Masato Yamamichi. The declaration submitted appears to have been executed by the proper party under 37 CFR 1.42, however, the declaration does not satisfy the requirements under 37 CFR 1.497(b)(2).

37 CFR 1.497(b)(2) states the following:

(2) If the person making the oath or declaration or any supplemental oath or declaration is not the inventor (§§ 1.42, 1.43, or § 1.47) the oath or declaration shall state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor would have been required to state. If the person signing is the legal representative of a deceased inventor, the oath or declaration shall also state that the person is a legal representative and the citizenship, residence, and mailing address of the legal representative.

Pursuant to revised 37 CFR 1.497(b)(2), in addition to the citizenship and former residence and post office address of the deceased inventor referenced under 37 CFR 1.497(a)(3) and 37 CFR 1.63, the declaration must also provide residence, citizenship, and post office address for the legal representative. The declaration filed on 02 June 2006 provides this information with respect to the heirs, but fails to provide the (former) citizenship of the deceased inventor. Accordingly, the declaration is not in compliance with 37 CFR 1.497(a)(3) and 37 CFR 1.63.

B. Declaration Filed 04 January 2007

The substitute declaration filed 04 January 2007 is executed by Msami Yamamichi, Satomi Yamamichi, and Keiko Yamamichi as the "heirs" of Masato Yamamichi and provides their residence, post office address and country of citizenship. In addition, the declaration provides the country of citizenship of the deceased inventor. The declaration is acceptable under 37 CFR 1.42 and complies with 37 CFR 1.497(a)-(b).

It is noted that the submission of the declaration executed by all of the heirs of the deceased inventor is hereby construed as an indication that no legal representative of the deceased's estate has been appointed or is statutorily required to be appointed. If this interpretation is incorrect, applicant is required to promptly notify the Office of such and to submit a declaration properly executed by the legal representative of the deceased inventor in response to this decision.

CONCLUSION

The papers filed under 37 CFR 1.42 are **ACCEPTED**.

This application is being forwarded to the National Stage Processing Branch of the International Division for continued national stage processing.



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